No. 06-1428

Supreme Court, U.S.
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In The Supreme Court of the United States

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, ET AL.,

Petitioners,

v.

THE STATE OF ALABAMA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, on this record, the lower courts abused their discretion in declining to invalidate certain Alabama tax provisions after those same courts had already ordered numerous other forms of relief over a period of more than 20 years specifically to remove vestiges of racial segregation from Alabama's system of higher education?

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STATEMENT OF THE CASE

A. Tax Policies of the State of Alabama

Alabama funds public education, including higher education, primarily through income and sales taxes. App. 17, n. 16. Other states meet funding requirements in various ways; for example, some states have no income tax, and some have no sales tax. App. 17, n. 16. While not a principal source, property taxes do provide some revenue for education in Alabama, and legal limitations do result in relatively low property taxes in Alabama. App. 17-18. But throughout the history of this case, including this petition, there has been no evidence to show that an order invalidating Alabama's restrictions on property tax rates would result in increased tax rates, increased tax revenues, or, most importantly, increased funding of higher education, let alone that such invalidation would result in the removal of the alleged vestiges of segregation in Alabama's institutions of higher education.

B. The Current Action

On July 28, 2003, after remedial decrees had been implemented for many years, petitioners filed a Motion for Additional Relief seeking a declaratory judgment that certain provisions of the Alabama Constitution restricting the amount of ad valorem taxes imposed on property owners violated the United States Constitution, and, in addition, an injunction against enforcement of those provisions. App. 32-33. After an evidentiary hearing, United States District Judge Harold L. Murphy, who had been responsible for the case for nearly two full decades, denied the motion. On appeal, the Eleventh Circuit unanimously affirmed Judge Murphy's decision. The

opinion of Judge Hill, with whom Chief Judge Edmondson and Judge Kravitch joined, was released on January 31, 2007. App. 1.

C. Removal of Vestiges of Segregation Under Consent Decrees

No one disputes that the State of Alabama has "unbegrudgingly complied" with all decrees in this case. App. 6. During the more than twenty years' worth of remedial decrees, the State has appropriated $179 million in new funds for Alabama's historically black universities. App. 22. During the same remedial period, total undergraduate or graduate degrees awarded to black students have increased 96.43%, while white students' graduation rates have actually dropped 13.36%. App. 22. Additional settlement agreements approved by the district court in December of 2006 add additional millions of dollars of funding, such as an additional $7.3 million for Alabama State University's capital needs, an additional $25.8 million for Alabama A & M University's capital needs, up to $2 million per year through the 2010-2011 academic year for diversity scholarships, and $10 million for the Alabama Student Assistance Program. *See Knight v. Alabama*, 469 F. Supp. 2d 1016, 1040 (N. D. Ala. 2006), and Exhibit A to the Order and Final Judgment.

During the life of these remedial decrees calculated to eliminate vestiges of historical discrimination within the Alabama higher education system, Judge Murphy retained active jurisdiction over the case. *Id.* at 1021. He required the parties to provide voluminous annual reports detailing the racial composition of the students enrolled at Alabama institutions of higher education and other statistical data.

Id. After some years, Judge Murphy appointed an oversight committee consisting of nationally known educational leaders to oversee administration of court-ordered remedies, and Judge Murphy himself conducted periodic reviews of the effectiveness of its decrees. At the settlement hearing, one of the class representatives, John Knight, agreed that the State of Alabama had complied with the terms of the remedial decrees. *Id.* at 1026. No one has ever complained that the State has been unable to provide the resources required by the remedial decree (i.e., the resources necessary to eradicate the vestiges of *de jure* segregation identified by the district court), because of limited funds or restrictions placed on state property taxes.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners do not allege that the Eleventh Circuit's decision here implicates any split of authority that requires resolution. *See* Sup. Ct. R. 10(a). Nor do petitioners allege that the Eleventh Circuit's decision here implicates a question of national importance. *See R. Stern, E. Gressman, et al., Supreme Court Practice* § 4.2, at 223 (8th ed. 2002) ("The Court has traditionally expended its time and resources on those cases that present issues of national importance . . . "). Petitioners seem to portray the Eleventh Circuit's decision as one that "conflicts with relevant decisions of this Court" (Sup. Ct. R. 10(c)), but as shown below, it is clear that those decisions are inapposite. The real issue petitioners raise is whether, on this record, the lower courts erred in finding that there was no evidence of causation or redressability. Such a fact-bound request for

what can only be understood as pure error-correction is an insufficient basis for certiorari. *See* Sup. Ct. R. 10.

I. The Petition Should Be Denied Because It Challenges Settled Principles of Law.

Petitioners assert that the district court found a violation of the Equal Protection Clause but "refused to provide any relief." Pet. 7. They are wrong, as evidenced by the extensive relief Judge Murphy has ordered in remedial decrees over nearly two decades including changes in curricula, new programs, and hundreds of millions of dollars in new funds to Alabama's historically black institutions. App. 22. Petitioners cannot seriously contend that the district court refused to provide "any" relief;[1] instead, their contention must be that Judge Murphy, in the exercise of his discretion, declined to award the specific *additional* relief petitioners seek. But that is tantamount to arguing that, once the district court finds that a law was enacted with a discriminatory purpose, it is thereafter legally bound to order whatever relief a plaintiff seeks; in other words, that the court lacks discretion in deciding how to fashion a remedy.

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[1] Petitioners say that the court of appeals "got wrong other alleged facts" in various ways, including that "diversity scholarships the Court of Appeals refers to did not benefit black students." Pet. 15, n. 2. In fact, the court of appeals never said that diversity scholarships benefited black students. It did say that there were "many financial aid programs benefiting black students" and that minority and diversity scholarships had been added at Alabama's historically black universities. It did not say, though, that the diversity scholarships specifically benefited black students. Moreover, when petitioners say that diversity scholarships did not benefit black students, they seem to ignore a fact they made repeatedly during the course of this litigation – that the increased diversity made possible by such scholarships benefits *all* students.

This contention runs contrary to settled principles established and reiterated in school desegregation cases from *Brown II* to the present. *See Brown v. Bd. of Educ.*, 349 U.S. 294, 300, 75 S. Ct. 753, 756, 99 L. Ed. 1083, 1106 (1955) ("In fashioning and effectuating the decrees, the courts will be guided by equitable principles."); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15, 91 S. Ct. 1267, 1276, 28 L. Ed. 2d 554, 566 (1971) ("[T]he scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."); *Milliken v. Bradley*, 433 U.S. 267, 288, 97 S. Ct. 2749, 2761, 53 L. Ed. 745, 761 (1977) (nor do we find any other reason to believe that the broad and flexible equity powers of the court were abused in this case."); *Lee v. Anniston City School System*, 737 F.2d 952, 955 (11th Cir. 1984) ("In carrying out its duty to eliminate the vestiges of unlawful desegregation in the school system, the district court has available to it the full panoply of remedial powers. When reviewing a district court's desegregation order, an appellate court is limited to determining whether the court's order was an abuse of discretion, and is bound by the district court's findings of fact unless clearly erroneous.") (internal citations omitted); *Lee v. Macon County Bd. of Educ.*, 970 F.2d 767, 778 (11th Cir. 1992) ("For nearly 30 years, the district court has retained jurisdiction over this case to enforce the mandates of the 1963 desegregation order. The district court's enforcement powers include the full panoply of equitable powers, and we review that court's use of these powers only for abuse of discretion.").

Furthermore, and more specifically, a broadside attack on the legal framework for raising tax revenue like the one

here is a matter especially left to the discretion of the district court, as this Court has noted.

> Thus, we stand on familiar grounds when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. . . . No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena . . . the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 41, 93 S. Ct. 1278, 1301 (1973).

Petitioners have offered nothing to show that Judge Murphy – who has lived with this case for two decades – abused his discretion in fashioning appropriate relief here. To the contrary, their argument is that a federal court "may not decline to grant any relief." Pet. 16. The petition should be denied because, first, Judge Murphy has ordered extensive relief over the course of many years, and, second, because the relief ordered was manifestly within Judge Murphy's discretion.

II. The Petition Should Be Denied Because, On This Record, There Has Been No Showing of Causation or Redressability.

The lower courts found that there was no causal link between the challenged property tax provisions and any

segregative effect in higher education or otherwise. App. 15-16. Petitioners have done nothing to challenge that finding before this Court. Numerous decisions of this Court, moreover, make clear that injury and causation are not mere formalities, but rather are critical elements in determining whether petitioners' claims are cognizable under Article III of the United States Constitution.

Petitioners argue, essentially, that Alabama's property tax structure affects higher education by causing Alabama's entire education budget, including K-12 education, to be underfunded. This underfunding, they argue, causes K-12 and higher education to compete for revenue, with the result that there is less money to fund programs and scholarships in higher education. Judge Murphy, who, given his experience, knows this case inside and out, considered this argument and expressly found that any causal connection between the challenged tax provisions and segregative effect involving higher education was too speculative and attenuated to warrant relief. App. 97-98, App. 106. Judge Murphy also found that the relief sought by petitioners, essentially an injunction against enforcement of the challenged property tax provisions, would not necessarily result in any increased revenue or, if revenue were increased, that any of it would go to K-12 schools or Alabama's colleges and universities. Moreover, Judge Murphy eventually found that his previous orders had removed the vestiges of segregation from Alabama's system of higher education to the extent practicable and consistent with sound educational principles. *Knight v. Alabama*, 469 F. Supp. 2d 1016, 1028 (N.D. Ala. 2006).

It is true, of course, that the lower courts found that the challenged property tax provisions were traceable to an unfortunate era of Alabama's history when segregationist

policies were ascendant. Following *United States v. Fordice*, 505 U.S. 717, 112 S. Ct. 2727 (1992), Judge Murphy thus shifted the burden of proof to the State to prove that the provisions no longer had a segregative effect. Judge Murphy took live testimony in a two-day evidentiary hearing and expressly found that the State had met its burden of proof, and that the challenged provisions did not have a continuing segregative effect. In affirming his decision, the Eleventh Circuit echoed Judge Murphy's reasoning when it wrote that "there are simply far too many links in this chain to permit us to infer that Alabama's method of funding its K-12 education causes, in any meaningful way, the continuing segregation of its colleges and universities." App. 15.

The court of appeals observed that "[m]any other public programs," including transportation, public safety, public health, and a host of others, "compete for the Alabama tax dollar." *Id.* Accordingly, there is no way to predict whether increased revenues would result in increased funding for higher education or something else. Even if Alabama's property tax laws were enjoined, it is speculative, at best, whether new laws would be enacted to raise taxes. Indeed, the Eleventh Circuit noted that in 2003 Alabama voters overwhelmingly rejected a plan to overhaul the state's income and property tax system, suggesting that Alabamians would be unwilling to raise property tax rates. App. 15. The court of appeals further noted that petitioners had failed to show that the relief requested would actually result in increased revenue, emphasizing that the petitioners' "attenuated" chain of causation failed to consider the possibility that raising taxes might result in business flight, which in turn could result in *lower* tax revenues. App. 16.

These factual findings show that the district court would have abused its discretion, and exceeded the scope of its remedial powers, if it had proceeded to use this case to fundamentally rework Alabama's property tax system. In *Missouri v. Jenkins*, 505 U.S. 70, 115 S. Ct. 2038 (1995), this Court reversed a district court's remedial decree that included salary increases for faculty in the Kansas City Municipal School District where the goal was "desegregative attractiveness." *Id.* at 100, 115 S. Ct. at 2055 (1995). This Court explained that such a goal entailed "so many imponderables and is so far removed from the task of eliminating the racial identifiability of the schools within the KCMSD that we believe it is beyond the admittedly broad discretion of the District Court." *Id.*

Finally, the district court's remedial decrees, including funding orders and establishment of need-based scholarships, have addressed the effects of funding disparities in Alabama's higher education system and have served to break whatever weak or "attenuated" connection may have existed between the challenged provisions of the law and any segregative effect.

Given that evidence of causation is absent from this case, petitioners' reliance on *Allen v. Wright*, 468 U.S. 737, 104 S. Ct. 3315 (1984), is inexplicable. In *Allen*, this Court held that a constitutional challenge to tax exemptions for allegedly discriminatory private schools was barred by the plaintiffs' failure to demonstrate, among other things, that the tax exemptions had a segregative effect on the public schools attended by the plaintiffs. In fact, describing the issue as one of constitutional standing, this Court in *Allen* used language very similar to that used by the lower courts in this case:

> The illegal conduct challenged by respondents is the IRS's grant of tax exemptions to some racially discriminatory schools. The line of causation between that conduct and desegregation of respondents' schools is *attenuated at best*.

Id. at 758 (emphasis added). Given the lower courts' holdings that the petitioners' theory of causation here, too, is "attenuated," *Allen* requires denial of the petition.

In *Allen*, this Court relied on several earlier cases in which plaintiffs' failure to prove causation, or a related failure to prove that the requested relief would result in redress of their alleged injury, amounted to a lack of standing. In one of those cases, *Warth v. Seldin*, 422 U.S. 490, 95 S. Ct. 2197 (1975), the plaintiffs sought removal of zoning restrictions that were alleged to maintain the existence of racially segregated neighborhoods. *Id.* at 495-96. The plaintiffs were unable to show, however, that there was a causal relationship between the zoning ordinances and the settlement patterns. To the contrary, they relied on "little more than the remote possibility, unsubstantiated by allegations of fact, that their situation might have been better had respondents acted otherwise, and might improve were the court to afford relief." *Id.* at 507. Consequently, there was "no actionable causal relationship between [the city's] zoning practices and petitioners' asserted injury." *Id.*; *see also Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 96 S. Ct. 1917 (1976) (injury must result from the challenged action, and relief from the injury must be likely to follow from a favorable decision). Petitioners' dogged reliance on "but-for" causation misses the point: Judge Murphy found, and the Eleventh Circuit agreed, that an injunction against the tax provisions at issue is unlikely to have any effect on funding for higher

education in Alabama. App. 23. ("[T]he challenged tax policies have not undermined that desegregative process to a level that even remotely triggers the United States Constitution.").

The petitioners' reliance on *Hunter v. Underwood*, 471 U.S. 222, 105 S. Ct. 1916 (1985), is likewise misplaced. *Underwood* involved Alabama's allegedly racially discriminatory law disenfranchising persons convicted of certain crimes. Causation and redressability were not issues in *Underwood*, because disenfranchisement, unlike an entire system of taxation, is a status that can be easily and completely redressed with a court order. *Underwood* involves a completely different situation from that presented here, where the claims of discrimination have been carefully and comprehensively addressed over a 20-year period and will continue to be remedied under existing consent decrees.

Petitioners' reliance on *Hunter v. Erickson*, 393 U.S. 385, 89 S. Ct. 557 (1969), is equally misplaced. In *Erickson*, the City of Akron had adopted an ordinance for the purpose of restricting minorities' access to governmental procedures for remedying housing discrimination, resulting in "special burdens on minorities within the governmental process." *Erickson*, 393 U.S. at 391. Because the ordinance was clearly the cause of the "special burdens," the injury was completely redressed by enjoining the ordinance. Causation and redressability, therefore, were not at issue. In this case, by contrast, where the effect of enjoining or invalidating certain tax provisions is not only unknown, but unknowable, it cannot be said that any remedial, desegregative effect would result.

In short, *Erickson* and *Underwood* involve situations in which an order enjoining enforcement of certain statutes provided complete relief to victims of discrimination. They are not desegregation cases, do not involve remedial decrees, and do not involve the issue of the removal of segregative effects through remedial decrees.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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